

Message Text

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PAGE 01 STATE 035148

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FOR BOEKER AND KORP

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TAGS: EINV, EFIN, OECD

SUBJECT: CIME DRAFTING GROUP: GUIDELINES FOR MNE'S

REF: A) OECD 4268, B) OECD 3095, C) OECD 3889, D) STATE

33911

1. SUMMARY, SECRETARIAT DRAFTS OF CONSULTATION AND
"CHAPEAU" PROVISIONS IN REFTEL A REPRESENT TOTALLY UN-
AUTHORIZED INTRUSION OF SECRETARIAT INTO THE NEGOTIATIONS,
AS DOCUMENTS CONTAIN LANGUAGE WHICH IN NO WAY REFLECTS
DISCUSSION IN LAST IME MEETING. WHILE PERHAPS ADVANCING
INTEREST OF SECRETARIAT IN ESTABLISHING BUREAUCRATIC
INFRASTRUCTURE IN SUPPORT OF IME, NEW PROPOSALS IN MANY
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PAGE 02 STATE 035148

INSTANCES GO DIRECTLY COUNTER TO USG POSITIONS AND TO WHAT

WE THOUGHT SECRETARIAT HAD AGREED TO. US DEL WILL MAKE EVERY EFFORT TO HAVE DRAFTING GROUP AVOID DISCUSSION OF THESE ISSUES AT DRAFTING GROUP AND, IN APPROACH TO SECRETARIAT, WILL STATE USG POSITION ON SECRETARIAT INITIATIVE AND LANGUAGE. US ALSO HAS PROBLEMS WITH INCENTIVES/ DISINCENTIVES DRAFT. COMMENTS ON NATIONAL TREATMENT SENT SEPTEL. END SUMMARY.

2. CONSULTATION PROVISIONS: AS NOTED REFTEL B, PARAS 26-27, MAJOR ISSUE LEFT WITH IME WAS WHETHER OR NOT TO ACCEPT

CHAIRMAN'S COMPROMISE LANGUAGE. CONSULTATION ISSUE WAS NOT AND SHOULD NOT BE GIVEN TO DRAFTING GROUP. INSERTION OF NEW LANGUAGE IN REFTEL A OBSCURES ISSUE OF DECISION ON COMPROMISE, AND IGNORES ESSENTIALLY INTERGOVERNMENTAL CHARACTER OF CONSULTATION PROCEDURES BY AUTHORIZING COMPANIES TO INITIATE CONSULTATIONS. IT ALSO NEEDLESSLY CHANGES LANGUAGE IN PARA 1, WHICH HAD BEEN ESSENTIALLY AGREED UPON, AND NEW LANGUAGE MORE CLEARLY WOULD PERMIT, COUNTER TO US POSITION, BIAC AND TUAC TO EXPRESS VIEWS ON ANY MATTERS RELATED TO GUIDELINES RAHTER THAN GENERAL MATTERS.

3. PARAS 2 AND 3 OF SECRETARIAT DRAFT NEEDLESSLY RAISE COMPLICATED BUREAUCRATIC AND PROCEDURAL ISSUES WHICH SHOULD BE CONSIDERED AT LATER STAGE, IF AT ALL. ONLY PERSON SUPPORTING THESE PROVISIONS APPEARS TO BE VOGELAAR.

QUESTION OF FACT-FINDING IN PARA 3 AND INTRICATE PROCEDURE ALSO TEND TO MAKE CONSULTATIONS MORE OF REGULATORY DEVICE THAN US WOULD FAVOR. PARA 6 INTRODUCES A NEW AND UNWELCOME IDEA.

4. "CHAPEAU": USG WAS UNDER IMPRESSION THAT VOGELAAR HAD AGREED IN BONN TO PUT FORWARD US DRAFT AS CHAPEAU TO PACKAGE. EXCEPT IN PARA 8, US DRAFT VIRTUALLY IGNORED. SECRETARIAT EFFORT IS A POOR MAN'S VERSION OF THE EXISTING INTRODUCTION TO THE MNE GUIDELINES. IT CLOSELY PARALLELS THIS INTRODUCTION, BUT MANAGES TO REINSERT MUCH OF THE OFFENDING LANGUAGE VIS-A-VIS MNES WHICH USG LABORED LIMITED OFFICIAL USE

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MIGHTILY TO DELETE FROM INTRODUCTION (SEE ESPECIALLY PARAS 2, 4, 6 OF DECLARATION, ALTHOUGH 5 AND 7 ALSO OFFENSIVE). PARA 3 OF "HEREBY AGREE" SECTION PREJUDGES ISSUE OF CONSULTATIONS. SECRETARIAT DOCUMENT IS, THERE-

FORE, BOTH SUPERFLUOUS AND HARMFUL. THE "DECLARATION" SECTION IS ALSO LESS THAN USEFUL.

5. INCENTIVES/DISINCENTIVES DRAFT (REF C) US DEL REPORT-
EDLY STATED AT LAST CIME THAT USG COULD NOT ACCEPT WEAKEN-
ING OF GENERAL STATEMENT OF PRINCIPLE ON INCENTIVES/DIS-
INCENTIVES. PARAGRAPH 1 OF SECRETARIAT DRAFT (REF C) THUS
UNACCEPTABLE. REMAINDER OF DRAFT APPEARS TO FOLLOW CIME
CHAIRMAN'S RECOMMENDATION FOR COMPROMISE TEXT.

6. CONCERNS REGARDING SECRETARIAT NATIONAL TREATMENT

DRAFT FORWARDED SEPTEL (REF D). KISSINGER

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